IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

INSURANCE APPEAL No.16 of 2004

(AGAINST JUDGMENT IN I.C.NO.19 OF 2001 ON THE FILE OF THE EMPLOYEES' INSURANCE COURT, ALAPPUZHA DATED 4TH AUGUST, 2003).

APPELLANT/OPP.PARTY:-

THE REGIONAL DIRECTOR,
E.S.I. CORPORATION, SWARAJ ROUND NORTH,
THRISSUR.

BY STANDING COUNSEL SMT.T.D.RAJALAKSHMY.

RESPONDENT: APPLICANT:-

PRAKASAN, S/O. VASAPPAN,
POKKALAYIL HOUSE, WARD NO.IV,
ARYAD PANCHAYAT, AVALOOKKUNNU POST.

BY ADV. SRI.A.JAYASANKAR
SRI.MANU GOVIND.

THIS INSURANCE APPEAL HAVING COME UP FOR ADMISSION ON 01/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

P.R.Raman,J.

Insurance Appeal No.16 of 2004

Dated, this the 1st day of February, 2007

JUDGMENT

The appellant is the Regional Director, E.S.I. Corporation, Thrissur. He is aggrieved by the judgment of the Insurance Court in I.C.No.19 of 2001. The respondent herein was an employee covered under the E.S.I. Act. While he was in employment, he had submitted Regulation Certificates for broken spells for the period from 20.9.1994 to 5.10.1997 for Bronchial Asthma and he was also paid sickness benefit for the same. He resigned from the job on 20.8.1998. Thereafter, he made a representation on 23.10.2000 for getting disablement benefit stating that he has lost his eye sight and he was suffering from Bronchial Asthma. On the basis of the aforesaid representation, investigation was conducted and it was found that no Regulation Certificates and claims were received from him and further that he had left employment two years back. Hence he was not eligible for any benefits and, accordingly, he was informed of that fact. Thereafter the respondent filed I.C.No.19 of 2001 before the E.I. Court, Alappuzha for a declaration that the injury affected to

him is an employment injury and also for an order to constitute a Medical Board and to assess his disabilities and pay the disability benefit from the date of loss of job till his death. The E.I. Court by the impugned judgment found that the respondent is having major health problem due to his very allergic temperament and because of his failure to raise his grievances at the appropriate time, the appellant is resisting the claim and there is no justification to deny the benefits. Though it was found that in the normal circumstances the appellant will be justified in rejecting such claims, but in the factual situation it was found that the present is the case of a covered employee who had been under E.S.I. coverage for several years. Even in the case of an employee who had been covered under the E.S.I. Scheme and later ceased to be in employment, there is nothing in the Rule disentitling him to get the disablement benefit. It is true that he had not paid the contribution of Rs.10/- for every contribution period, but the non-payment of the same was due to ignorance of law and procedure and he was also directed to remit the said contribution and once that entitlement is regularised, the case of the respondent-applicant was directed to be referred for decision

by Allergic Test Centre at Chennai where this type of allergic problems are thoroughly examined and expert opinions are given. In other words, the Tribunal did not finally held whether the respondent is entitled to the benefit or not, but he was only enabled to pay the contribution and thereafter the Corporation was directed to refer his case for expert opinion and if he is otherwise entitled, to grant the benefits.

2. The learned Standing Counsel appearing for the Corporation contended that by virtue of Rule 60 of the Employees State Insurance (Central) Rules, 1950, an employee who resigns from the post would not be entitled to any continued disability benefit. On the other hand, the learned counsel appearing for the respondent submits that there is no such restriction as per the aforesaid Rule.

3. As per Rule 60 of the Employees' State Insurance (Central) Rules, an insured person who ceases to be in an insurable employment on account of permanent disablement caused due to an employment injury shall be eligible to receive medical benefits for himself and his spouse at the scale prescribed under the Act and the regulations made thereunder till

the date on which he would have vacated the employment on attaining the age of superannuation, had he not sustained such permanent disablement. This is subject to - (i) the production of proof by such an insured person that he ceased to be in an insurable employment on account of permanent disablement due to employment injury to the satisfaction of such officer as may be authorised by the Corporation and (ii) the payment of contribution at the rate of ten rupees per month in lumpsum for one year at a time in advance to the concerned office of the Corporation in the manner prescribed by it. The above provision leaves no room to doubt that this is a benefit to be given till the normal date of superannuation and expressly makes it clear that the insured person should be ceased to be in an insurable employment. Therefore, if he had continued in service, he would be continued to be an insured person. Therefore, the benefit that is extended to an insured person who ceased to be in an insurable employment on account of permanent disablement caused due to an employment injury should necessarily takes in an employee resigned from his job due to his permanent disablement. Therefore, the cessation of employment is no

ground to deny disablement benefits. Of course, the conditions specified under clauses (i) and (ii) of Rule 60 have to be satisfied. The only dispute raised in this case was that he did not pay the contribution, but in the factual situation the Tribunal has directed him to pay the contribution as ignorance of law and procedure for payment of nominal sum of Rs.10/- could not deny him the disablement benefit, if he is otherwise entitled to. The view taken by the Tribunal, in such circumstances, cannot be faulted. In the circumstances, I find no merit in this appeal and it is, accordingly, dismissed.

P.R.Raman
Judge

vku/-